



July 3, 2000

Mr. Thomas F. Keever  
Assistant District Attorney  
County of Denton  
P.O. Box 2850  
Denton, Texas 76202

OR2000-2499

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136741.

The Office of the Honorable Kirk Wilson of the Denton County Commissioners Court (the "office") received a request for information relating to twenty-one enumerated items for the date of April 11, 2000. You claim that the requested information is excepted from disclosure under section 552.131 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, "no later than the 15<sup>th</sup> business day after the date of receiving the written request," must submit to the attorney general "a copy of the specific information requested." Gov't Code § 552.301(e)(1)(B). If the governmental body fails to do this, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You state that the office received the request for information on April 13, 2000. Accordingly, the office's deadline for submitting to the information at issue to this office expired fifteen business days later on May 4, 2000. *See* Gov't Code § 552.301(e)(1)(B).

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<sup>1</sup>We note that you maintain that the request is "overbroad and does not sufficiently specify the documents and/or information it seeks." However, you state that you recognize that this office's previous ruling, Open Records No. 2000-0254 (2000), as well as other rulings regarding previous identical requests received by your office, are controlling on this issue.

You explain that the documents at issue consist of a letter, which you refer to as "Exhibit C" and an electronic correspondence, which you refer to as "Exhibit D." While you timely submitted Exhibit C to this office, no Exhibit D was enclosed with your letter of May 4, 2000. As of the date of this ruling, this office has not received the electronic correspondence which you claim to be at issue. Therefore, the office has missed its fifteen-day deadline as prescribed by section 552.301 in regard to the electronic correspondence. As you have not shown, and we are unable to discern, a compelling reason to withhold the electronic correspondence, the office must release it to the requestor. *See Open Records Decision No. 150 (1977)* (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).<sup>2</sup>

We now turn to the letter submitted as Exhibit C which you claim is excepted from disclosure under subsection 552.131(b) of the Government Code. Subsection 552.131(b) provides that "[u]nless and until an agreement is made with [a] business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure]." You explain and the letter at issue concerns an offer of a tax abatement made by Denton County to a representative of an economic prospect as part of the county's proposal to attract the prospect to locate in the county. We have reviewed the letter and agree that it is excepted from disclosure under section 552.131(b). Accordingly, the office may withhold the letter submitted as Exhibit C. We note, however, that the applicability of section 552.131(b) ends once an agreement is made with the business prospect. Gov't Code § 552.131(b), (c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>2</sup>Because you have not submitted Exhibit D, we have no basis for finding it confidential. Thus, we have no choice but to order Exhibit D released per section 552.302. If you believe the information contained in Exhibit D is confidential and may not lawfully be released, the office must challenge the ruling in court as outlined below.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/ljp

Ref: ID# 136741

Encl. Submitted documents

cc: Mr. Charles Siderius  
Staff Writer  
Denton Record-Chronicle  
P.O. Box 369  
Denton, Texas 76202  
(w/o enclosures)